IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 310 OF 2005

Shailesh Ashok Kale. ... Applicant.

Versus.

State of Maharashtra. ... Respondent.

Shri A.P.Mundargi with Shri S.V.Marwadi and Smt.Shobha Salvi for the Applicant.

Ms.S.D.Shinde, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 6th October, 2005.

ORAL JUDGMENT.:

1. Rule. The learned A.P.P. waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The prayer in this petition is for setting aside the order of framing charge passed by the learned Sessions Judge, Mumbai. The charge has been framed under sections 498A, 306 and 304-B of the Indian Penal Code. With a view to appreciate the submissions made by the Counsel appearing for the parties, it will be necessary to refer to the facts of the case in brief.

3. The first informant is the mother of the deceased. The deceased was married to the Applicant. According to the first informant, the Applicant was a friend of her son and that is how the marriage was

arranged between the deceased and the Applicant. The marriage was performed on 22nd March 2000. According to the first informant, her family hails from Punjab and the family of the Applicant is a Maharashtrian family. According to the first informant, there were disputes between the deceased and the Applicant regarding the tradition followed in the family of the deceased. According to the first informant, due to the religious nature of the Applicant, he was not able to provide pleasures of the matrimonial life to the deceased. According to her, the Applicant used to torture the deceased. According to her there used to be a dispute between the deceased and the Applicant. On 23rd September 2000, the deceased committed suicide by jumping from the balcony of her matrimonial home.

4. The learned Senior Counsel appearing for the Applicant submitted that there is absolutely no material for framing charge under any of the sections of the Indian Penal Code as ingredients of none of the offences have been made out. He submitted that it is not the case of the prosecution that the Applicant assaulted the deceased. He pointed out that there is also no case made out for demand of any dowry. He submitted that ingredients of section 306 are totally absent. The learned A.P.P. for the State pointed out that only a charge has been framed against the Applicant and therefore, no interference is permissible. Lastly it

was pointed out that on perusing the statements recorded during the investigation, there is a clear case of commission of offences under sections 498A, 306 and 340-B of the IPC made out and therefore, the charge has been rightly framed.

5. With the assistance of the learned Counsel appearing for the parties, I have gone through the statements of all the witnesses which are produced along with the charge sheet. The first informant-mother has deposed that the dispute between the deceased and the Applicant arose because of the different family background of the deceased and the Applicant. The first informant has stated that as the Applicant was very religious in nature, he could not provide the pleasures of the matrimonial life to the deceased. The case of the first informant is that on the day on which the deceased committed suicide, in the afternoon, she had visited her parent's home and complained about the ill-treatment meted out to her by the Applicant. According to the first informant, she suggested the deceased to leave the Applicant. However, the deceased refused to do so and stated that she does not desire to marry with any one else. According to the first informant, on that day the deceased was suffering from cold and cough and therefore, she advised the deceased to go to a Doctor. According to the first informant, the deceased went back and called her back and informed

that she visited the dispensary of Doctor and that she was alright by that time.

6. The second statement is of the father of the deceased whose version is identical as the version of the first informant. The next statement is of one Sunil Umanath who is a resident of the building in which the deceased was residing after marriage. The said statement does not help the prosecution. There is a statement of one Karuna Sharma who is the aunt of deceased. She has stated that due to different family background of the Applicant and the deceased, there used to be disputes between them. She has also stated that the deceased had informed her that the Applicant was not in a position to provide pleasures of matrimonial life to the deceased. The statement of one Meena Ashok Ghai again does not throw any light on the relationship between the Applicant and the deceased. Same is the case with the statement of Manu Devendra Sharma. The statement of the mother of the Applicant has also been recorded. She has also stated that there used to be a dispute between her son and the deceased. She has not stated about about any dispute between the Applicant and the deceased on the date of the incident. On the contrary she stated that in the evening the Applicant took the deceased to a Doctor. The statement of the Doctor Mahesh Pandya who treated the deceased on the very day, discloses that the deceased was accompanied by

the Applicant and while they were in the clinic, they were chitchating with each other. He stated that he did not notice any tension between the Applicant and the deceased. The statement of Sanjog Prakash Vaidya shows that the deceased had disclosed to him that her husband i.e. the Applicant was causing mental harassment to the Applicant and was repeatedly stating that he does not want any issue to be born out of the said wedlock. The witness Neelima Rajesh Jonsa has stated that the Applicant was ill-treating the deceased and once he assaulted the deceased. She has stated that the mother-in-law of the deceased banged her head on the wall. Another witness Aeriel Jhuda Ebrahim stated that the deceased had informed her that the Applicant was assaulting her.

7. A perusal of the statements shows that none of the witnesses has stated about any demand by the Applicant or his family members in cash or in kind of dowry. Section 304-B of the IPC reads thus:

> 304-B. Dowry death. - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in

connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

. Explanation.- For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

. (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

Neither the first informant nor any of the other witnesses have alleged any demand for dowry either by the Applicant or by any member of his family, and therefore, section 304-B of the IPC does not apply. In fact initially the prosecution did not apply section 304-B of the IPC. So far as section 498 of the Indian Penal Code is concerned, number of witnesses have stated that the Applicant had subjected the deceased to cruelty. So far as section 306 is concerned, I find that on the basis of the statements of the witnesses, there is some material to frame charge against the Applicant for the said offence. The Revision Application partly succeeds. Since there is no material

whatsoever to frame charge under section 304B of the Indian Penal Code, the order dated 12th September 2005 is modified to that extent.

8. According I pass the following order:

(i) The Revision application partly succeeds. The charge framed under section 304-B of the IPC is quashed and set aside. The charges framed under the other sections viz. section 498(A) and section 306 are maintained.

(ii) At this stage, the learned Counsel for the Applicant prays that the order may be stayed for a reasonable time to enable the Applicant to approach the higher Court. The prayer for stay is rejected.

Judge.